



File: 30050-25/CGLP-18

Reference: 359893

August 6, 2020

SENT VIA EMAIL

Chief Knedebeas
620 CN Station Road
Smithers BC, V0J 2N1
Tsewedielh@gmail.com

Dear Chief Knedebeas:

I am writing to let you know the results of the Environmental Assessment Office's (EAO) review of Coastal GasLink Pipeline Ltd.'s (CGL) updated Condition #1 Report #2 (COR2), submitted on July 17, 2020.

I would like to begin by expressing my sincere appreciation for the very active, open and honest participation that you and other Dark House representatives have had over the past months while working to inform CGL's outstanding requirements of Condition #1. I acknowledge that you have had many important priorities over this time, in addition to your role as Chief, which have included working with British Columbia (B.C.) and Canada on the May 14, 2020, Memorandum of Understanding between B.C., Canada, and the Wet'suwet'en Hereditary Chiefs (MOU) and supporting your house membership through the COVID-19 global health pandemic.

I would like to acknowledge the important work that you and the other Wet'suweten Hereditary Chiefs undertook with the governments of Canada and B.C. on the MOU. It has established a foundation to support the three governments in finding the path forward to implement Wet'suwet'en rights and title.

I would also like to acknowledge that while Dark House has been clear that you do not consent to the Coastal GasLink Pipeline Project (CGL Project) and would prefer that it avoid your territory altogether, over the past months you have actively engaged with the EAO and CGL to seek to identify ways in which the CGL Project could avoid or reduce some impacts to Dark House, and potentially carry out activities in a culturally appropriate, respectful manner.

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Background

As you are aware, CGL is required under Condition #1 of the Environmental Assessment Certificate (EAC) #E14-03 for the CGL Project, to submit to the EAO for approval *“a report that either verifies that the effects assessment conclusions reached in the Application are consistent with the information in the technical data reports (TDR) or update those effects assessment conclusions based on the new information contained in the TDRs, including any additional mitigation relevant to the Area.”*

The first Condition #1 Report was approved by the EAO on February 27, 2016. This first report addressed a portion of the Morice River Technical Boundary Area (MRTBA), as defined in Condition #1. The COR2 is in relation to the remaining portion of the MRTBA (reduced MRTBA).

On November 25, 2019, CGL submitted the initial version of COR2 (dated November 19, 2019) and associated TDRs to the EAO. The EAO conducted a review of the adequacy of COR2 and sought feedback from Relevant Regulatory Authorities and Indigenous nations.

After considering the information received during the review of COR2 from December 2019 to February 2020, the EAO identified specific aspects of COR2 that needed to be updated or addressed in order to adequately fulfil the requirements of Condition 1 in the [letter of February 19, 2020](#). This letter required CGL to provide additional information, particularly related to: the selection of valued components; the consistency of the methodology used to assess particular valued components with the Application Information Requirements (AIR); the incorporation of Aboriginal Traditional Knowledge; and how feedback from Indigenous nations had been responded to and addressed. The EAO requested that an additional 30 days of engagement be conducted with Dark House and other relevant Indigenous nations. On February 20, 2020, the EAO wrote to the Relevant Regulatory Authorities and the Indigenous nations of the decision regarding COR2.

Representatives of the EAO met with Dark House in March 2020 in Smithers, B.C., to discuss concerns, potential next steps and to seek to re-establish meetings between CGL and Dark House. Facilitated by the EAO, meetings between the EAO, Dark House and CGL began in April 2020, and have generally continued on a weekly basis since that time. Dark House presented a workplan to guide the steps that they proposed to take (in five phases), which would help inform CGL's development of the updated COR2. Implementation of the workplan began while it was being developed and the workplan was finalized on April 27, 2020. CGL agreed to take additional time to support the steps identified by Dark House and Dark House agreed to inform CGL's updated COR2 even though they objected to the CGL Project occurring within their territory.

The workplan had originally aimed to allow for CGL to seek the EAO's approval of the updated COR2 by July 1, 2020. In June, Dark House requested that CGL undertake additional work that included a traditional use study. CGL and Dark House agreed to the terms of this work, which aimed to allow CGL to file an updated COR2 with the EAO in late July and contemplated two additional phases of work following the submission of COR2 to the EAO.

The deliverables associated with this additional work include the Phase 1 Yex T'sa Wilk'us Land Use and Occupancy Study (LUOS) (completed on July 9, 2020), and the Phase 2 Report of specific locations of concern requiring site-specific mitigation and mitigation recommendations (anticipated for August 2020). CGL and Dark House also contemplated the need for future deliverables (Phase 3), which may be defined as an outcome of work completed in Phases 1 and 2. The agreed to terms of reference states that only Phase 1 of this work is directly related to Condition #1.

EAO Analysis

On July 17, 2020, CGL submitted an updated COR2 to the EAO. The EAO has carefully reviewed the updated COR2. The EAO notes that CGL has confirmed existing commitments required through the conditions of the EAC and made new commitments in response to specific concerns raised by Dark House, including in relation to the Healing Centre.

The EAO has also reviewed information provided by Dark House through the Condition #1 review process, including the Phase 1 Yex T'sa Wilk'us LUOS and Dark House's July 22, 2020 letter in response to CGL's filing of the updated COR2. I understand that further site-specific impacts and mitigation will be identified between CGL and Dark House as an outcome of Phase 2 work currently underway. I would like to take some time to clearly discuss each the issues raised in your July 22, 2020 letter.

Vegetation

Dark House expressed concerns with the methods used for conducting rare plant surveys within the reduced MRTBA. Dark House noted that COR2 indicates that rare plant surveys for the reduced MRTBA were conducted between July 16 to 20, 2019, and were of the view that it does not align with the methodology referenced in the AIR, which recommends seasonal coverage throughout the growing season.

As noted in Appendix C of the updated COR2, CGL responded to these concerns in a meeting with Dark House and the EAO on May 15, 2020 and a letter dated May 28, 2020. CGL stated that 33 rare plant surveys were completed within the MRTBA in 2014, 2015, 2018 and 2019. All plant surveys were completed between July 12 and September 6, which is a seasonal period of approximately seven weeks.

CGL further noted that the growing season and flowering period in the MRTBA is relatively short. Therefore, CGL stated that they conducted the rare plant surveys to capture the peak flowering period, when chances of detecting and identifying potential rare plant occurrences are highest. CGL also provided to the EAO and Dark House the qualifications of the registered professional that conducted the rare plant surveys.

In a June 19, 2020 meeting, CGL committed to undertake further rare plant surveys in advance of construction. CGL has offered participation in these surveys to Dark House. The EAO understands that these surveys were completed the week of July 27, 2020, with participation from Dark House.

The EAO is of the view that the methods presented in COR2 and the Vegetation TDR meet the requirements of the AIR. The EAO finds CGL's approach reasonable and also notes that CGL is required to adhere to the approved Red- and Blue-Listed Plants and Ecological Communities Survey and Mitigation Plan prepared to satisfy Condition #17, which requires site habitat assessment surveys for all locations within the Certified Pipeline Corridor and proposed mitigation to address potential adverse effects to those plants and ecological communities. The additional surveys conducted by CGL the week of July 27, 2020 should inform this plan requirement.

Current Use of Lands & Resources for Traditional Purposes, Cultural Sites

Dark House noted that Condition #1 requires that CGL verify that the effects assessment conclusions for the MRBTA are the same as those listed in the original EAC Application. COR2 indicates that disruptions to the Current Use of Land and Resources for Traditional Purposes valued component and the Cultural Sites valued component were assessed to be short term, isolated to periodic, and reversible, but fails to indicate whether or how these assumptions have been verified.

Condition #1 requires that CGL develop and submit TDRs based on field data and that the TDRs be used to either verify or update the effects assessment presented in the Application. It is the EAO's view that the level of information received to date is adequate to fulfill the requirements of Condition #1, including the verification of the conclusions made in the original EAC application. The EAO acknowledges that additional information is being collected as part of Phase 2 and possibly additional information may be collected in subsequent work. That level of more detailed site-specific information is consistent with the kind of information that is typically collected following an EA, and would be used to inform construction planning and possibly to support implementation of relevant EAC conditions and to inform permitting.

For the CGL Project, this information is likely relevant to inform the implementation of CGL's Environmental Management Plan (Condition #26), which includes a Traditional Land Use Sites Discovery Contingency Plan and Heritage Resource Discovery Contingency Plan.

The EAO acknowledges that Dark House does not agree with the results of the effects assessment presented in the Application and confirmed in the COR2. Dark House has communicated to the EAO and CGL that any impact to their ability to use the land and resources within their territory could have significant impacts on their ability to hunt as well as long-term impacts on cultural transmission and continuity.

Areas in Proximity to the Right of Way

Dark House is of the view that the effects assessment conclusions and mitigation in COR2 do not address potential impacts to areas of importance to Dark House and the Healing Centre, which are in direct proximity to the CGL Project footprint, including the pit house and trapline and other habitation and cultural sites.

The EAO acknowledges Dark House's concerns about these identified sites of importance but is of the view that the level of information received to date is adequate to fulfill the requirements of Condition #1. In addition to existing EAC conditions such as the Environmental Management Plan (Condition #26), which includes the Access Management Plan and Traffic Management Plan, CGL committed to continue to work with Dark House during the Phase 2 work to develop appropriate site-specific mitigation measures to avoid or reduce impacts to areas of importance to Dark House. The EAO understands that CGL has committed to developing a communications protocol with Dark House that would include mutually-agreeable approaches for the timely sharing of information regarding activities of each party, with the goal of minimizing or avoiding to the extent possible impacts to Dark House's use of their territory.

Economic Effects

CGL did not conduct any new studies for the economic effects assessment in COR2 in addition to those completed during the original EA. CGL concluded that because the baseline conditions and the potential interactions are comparable, there is no material change to the assessment of potential adverse effects, mitigation or residual effects for economy and employment and labour force for all CGL Project phases.

In the updated COR2, CGL noted the assessment of potential adverse effects of the CGL Project on economy was completed at a regional economic scale as defined in the AIR for the CGL Project and does not take into account individual business operations. CGL recognizes that Dark House has concerns about the potential effects of the CGL Project on the business operations of the Healing Centre.

CGL noted it remains committed to discussing the scope of these effects and seeking mutually agreeable mitigation or alternative measures to reduce the magnitude of the effects.

In Dark House's review of the updated COR2, they noted that the Healing Centre is the central component of Dark House's economy on a regional basis, not an individual business operation. Dark House also expressed concerns that the Healing Centre's grant funding could be impacted by the CGL Project, which in turn could affect Dark House's economy. Dark House is of the view that these impacts should be considered and addressed through Condition #1.

The EAO understands that CGL has committed to working with Dark House to address economic effects, including through the establishment of a communication protocol and monthly reporting, which would incorporate the findings from Phase 2. The EAO is of the view that this is an appropriate approach and encourage CGL and Dark House to find a timely resolution to this concern. The EAO also notes that the approved Socio-Economic Effects Management Plan requires CGL to undertake specific engagement and communication, including an issues management process, mitigation effectiveness monitoring and adaptive management.

Mitigation

In the review of COR2, Dark House requested that if CGL could not commit to avoiding their territory that it ensures that CGL Project-related activities do not take place at times which would disrupt Healing Centre programs. Dark House noted concerns that a rationale has not been provided as to why avoidance is not an option other than that CGL determined that alternative, unspecified routes were not technically or economically feasible at an earlier date prior to the COR2 process. Dark House is of the view that COR2 does not explain whether or how the new information provided by Dark House in the course of the COR2 process has informed CGL's position on mitigation.

In the updated COR2, CGL acknowledged the concerns raised about construction activities scheduled during Healing Centre programming, including hunting and trapping camps. In earlier CGL Project planning, alternate routing was considered and determined to not be feasible. CGL's analysis of the route evaluation criteria is presented in Section 1.4 of the original EAC Application.

Although CGL is unable to commit to ensuring no pipeline development activities occur during Healing Centre programming, the EAO notes that CGL is willing to work collaboratively on timing activities to reduce disturbance to programs.

With an understanding of the timing and location of Healing Centre programming, CGL has stated that they would be better able to arrange the construction schedule to avoid certain activities occurring in the same area at the same time as the Healing Center programming. To support these efforts, the EAO encourages Dark House to share this information with CGL, as appropriate, recognizing that it may change over time and that there may be some uncertainty about the exact timing of some activities due to changes in seasonal timing and species presence.

The EAO also recognizes that Dark House has asked for clear timing and location detail in the CGL's construction schedule, in order to better inform their planning. Dark House also expressed concern to the EAO that CGL may not make meaningful effort to avoid areas or timing if it results in any negative impact on the CGL Project schedule or cost. The EAO expects CGL to make reasonable efforts to seek to avoid or minimize impacts to Healing Centre programming activities, but the EAO also recognizes that unfortunately some effects are likely, particularly during construction.

CGL has committed to working with Dark House to determine how to support maintained programming at the Healing Centre, and has proposed a communication protocol be developed to allow for exchange of advance notification of Healing Centre programming activities and CGL Project construction activities and how to manage these activities to reduce potential impacts. The EAO is of the view that this is an appropriate approach and as will be discussed below, will require CGL to make reasonable efforts to develop this communication protocol collaboratively with Dark House prior to undertaking the CGL Project construction described in CGL's July 30, 2020, letter to the EAO. The EAO is willing to facilitate or otherwise participate in the development of a communication protocol at the request of either party.

Compliance

In the review of the updated COR2, Dark House noted that CGL has repeatedly violated conditions set out in its EAC for the CGL Project. Consequently, it is Dark House's view that ongoing supervision on the part of the EAO, including in respect of compliance and enforcement, is required to ensure that the existing EAC conditions and additional commitments identified in COR2 are carried out.

The EAO acknowledges the ongoing concerns with respect to compliance of CGL with the requirements of their EAC and the EAO remains committed to continuing to undertake active compliance and appropriate enforcement. The EAO notes that EAO's Compliance and Enforcement team will continue to have an ongoing role in ensuring CGL complies with the requirements of the EAC and issuing enforcement actions, as appropriate, throughout the life of the CGL Project. In follow-up to our meeting on June 9, 2020, the EAO would be pleased to further discuss Dark House's participation in the EAO's Compliance and Enforcement team's Indigenous liaison program.

The EAO also notes that CGL has implemented a Construction Monitoring and Community Liaison (CMCL) Program to satisfy the requirements of Condition #30. The CMCL Program provides opportunities for Indigenous participation within their traditional territory for the purposes of engaging, observing, recording and reporting on construction activities. Should Dark House want to participate in these types of activities, I encourage you to contact CGL directly.

Accommodating Impacts to Rights and Title

The EAO acknowledges that the CGL Project will affect Dark House's exercise of rights and title, and Dark House has requested that the EAO provide details on how B.C. intends to accommodate impacts on its rights and title in the event that the EAO accepts COR2 as fulfilling the requirements of Condition #1.

During the EA, the EAO determined that the CGL Project would have low to moderate impacts on Wet'suwet'en asserted Aboriginal title in the CGL Project area (refer to page 473 of the EAO's [Assessment Report](#)). The EAO also determined that the CGL Project would have minor impacts on Dark House members' asserted Aboriginal rights to hunt, gather, fish and trap in consideration of the EAO's analysis of potential residual and cumulative effects and the existing EAC conditions.

The EAO also concluded that the CGL Project would have negligible impacts on Dark House's culturally important sites, trails and travel ways during the original EA. The EAO acknowledges that Dark House has provided during the COR2 review and continues to collect additional site-specific information regarding how the CGL Project will specifically impact Dark House, which was not available during the EA.

The EAO, on behalf of B.C., proposes establishing a regular Government-to-Government regulatory meeting to help ensure that potential impacts of the CGL Project to Wet'suwet'en rights and title are being appropriately discussed and addressed. The EAO proposes that this forum would include representatives of Dark House and other Wet'suwet'en Hereditary Chiefs, as appropriate. Representatives of the Office of the Wet'suwet'en would also be invited to participate. From B.C., this call would include representatives from the EAO and the B.C. Oil and Gas Commission (OGC), the CGL Project's two main regulatory agencies. Other government agency representatives, including the Ministry of Indigenous Relations and Reconciliation, may participate on an as-needed basis or at the request of Wet'suwet'en representatives. The purpose of these regular meetings would be to establish improved Government-to-Government communication so that we can all stay informed and engaged as the CGL Project proceeds through construction and requires additional regulatory authorizations, and as compliance activities are undertaken, and as questions or concerns arise.

The EAO is also aware of the important dialogue occurring at the May 14 MOU table regarding implementation of Wet'suwet'en rights and title; if there is a desire to coordinate this regulatory call with the MOU discussion, the EAO would be open to coordinating that discussion through the Ministry of Indigenous Relations and Reconciliation.

While the EAO is also very willing to continue regular calls directly with Dark House for the purposes of regular engagement and updates specific to the CGL Project's EAC, we recognize that the broader regulatory call may be better positioned to address the broader concerns that may arise in relation to the CGL Project, particularly after we complete some of the activities related to Dark House's Phase 2 work and the development of CGL's communication protocol.

In consideration of the existing legally-binding EAC conditions, additional commitments and requirements of CGL identified during the COR2 review and the proposed ongoing regulatory call(s), the EAO finds the potential impacts of the CGL Project to Wet'suwet'en rights and title, including the recently identified impacts to Dark House and its exercise of those rights and title, are adequately accommodated in the circumstances.

Other Indigenous Nations

In the review of the updated COR2, Dark House identified that Condition #1 requires that COR2 be shared with other affected Indigenous nations.

The COR2 was originally submitted to potentially impacted Indigenous nations for review and comment in December 2019. Witsset First Nation, Nee Tahi Buhn Band and Skin Tyee Nation did not respond or provide comments on the COR2. The EAO wrote to these groups and the Office of the Wet'suwet'en on February 20, 2020 to inform them of the additional requirements of CGL to engage and update COR2, and these groups did not provide the EAO or CGL any additional information during this additional period. The EAO understand that CGL shared the updated COR2 with other potentially impacted Indigenous nations on July 23, 2020.

EAO's Conclusions and Next Steps

After considering all the information received during the review of COR2, it is the EAO's view that the information received is adequate to fulfil the requirements of Condition #1. The EAO acknowledges the value in ongoing and site-specific information gathering between Dark House and CGL through the completion of Phase 2, to ensure that any potential impacts which may affect Dark House's exercise of rights and title are avoided and minimized to the extent possible.

The EAO notes that CGL is required to implement the existing EAC conditions and additional commitments referenced in COR2 and this letter unless otherwise authorized by an RRA.

The EAO recognizes that many of the activities being undertaken for Phase 2 will further minimize effects to Dark House, and may also meet concurrent requirements for engagement, and site-specific information and mitigation, as outlined in the approved management plans required by the CGL Project's EAC.

It is the EAO's understanding that clearing and grading for the purposes of construction will be undertaken by CGL starting in September 2020 and that the Phase 2 work will be completed in advance of this. The EAO's analysis is based on this timeline. If further modifications to the timing of Phase 2 or construction activities are contemplated by either party, we require CGL to notify the EAO. We would then seek to engage with Dark House and CGL to understand the nature and potential implications of these timeline modification with regards to Condition #1.

In closing, while the report required by Condition #1 has now been approved by the EAO, I note that CGL has committed to:

- Develop a draft communication protocol collaboratively with Dark House, with reasonable efforts to finalize the protocol prior to undertaking CGL Project construction activities described in CGL's July 30, 2020 letter to the EAO. The protocol would include explanation from CGL about how they have sought to reduce or avoid impacts on Dark House and Healing Centre programming, as identified during Phase 2 and other engagement; and
- Incorporate newly obtained traditional and current use information into all subsequent permit applications as required by Condition #28 of the EAC.

The EAO remains committed to continued involvement and oversight regarding Phase 2 and ensuring CGL meets its commitments to Dark House as outlined in COR2.

The EAO is also committed to ongoing work with Dark House through direct engagement and/or a broader Government-to-Government regulatory meeting. The EAO would like to discuss the format and structure of the proposed regulatory call with Dark House, other Wet'suwet'en Hereditary Chiefs, the Office of the Wet'suwet'en and other provincial agencies at the earliest convenience. The EAO will follow-up with Dark House staff, Anne Spice, the week of August 11, 2020, to discuss options for future meetings in more detail.

If you have any questions about this letter, please contact me at Nathan.Braun@gov.bc.ca or 778 698-9280, or Lindsay Luke at Lindsay.Luke@gov.bc.ca or 778 698-9308.

Sincerely,

A handwritten signature in blue ink, consisting of the letters 'NB' followed by a long horizontal flourish.

Nathan Braun
Acting Assistant Deputy Minister

cc: Freda Huson
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